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Few Major Changes From Committee Version:

After a Welter of Amendments, House Passes Defense Measure

After two weeks of debate on issues ranging from space weapons to spies, the House on June 27 passed its defense authorization bill for fiscal 1986.

Debated as HR 1872 and passed as S 1160 by a vote of 278-106, the bill authorized \$216 million for weapons procurement, military research and operating costs of the Pentagon.

This would fit into an overall defense budget of \$292.5 billion, the same size as the fiscal 1985 budget.

The Senate's version of S 1160, passed in late May, was part of a total defense budget of \$302.5 billion, an increase over the fiscal 1985 level adequate to pay the cost of inflation. (*Weekly Report* p. 1090)

Despite adopting 165 amendments, the House made few significant changes in the Armed Services Committee's version of the bill. It accepted the Armed Services panel's recommendation of how to trim \$10 billion from the bill as reported, in order to meet the defense ceiling in the House-passed budget resolution. (*Committee bill, previous House action, Weekly Report* pp. 928, 1195)

The committee position on controversial weapons was overruled by the House only in its denial of funds to produce additional MX missiles in fiscal 1986 and in its vote to bar tests of the anti-satellite (ASAT) missile. (*ASAT, p. 1263*)

But the committee finally prevailed in its four-year-long fight to win House approval for producing a new generation of lethal chemical weapons. (*Weekly Report* p. 1248)

The only defense policy issues on which the committee faced serious challenges involved various changes — spurred by highly publicized "horror stories" of overcharging — imposed on Pentagon purchasing.

Some of the most vociferous re-

formers were pro-Pentagon conservatives, like Jim Courter, R-N.J. But more sweeping changes than Courter's were backed by liberals like Barney Frank, D-Mass., who long have been critical of the Pentagon but usually with much less success than has greeted their attacks on waste, fraud and abuse.

"I sympathize with some of my conservative friends," Frank said. "They are in the position some of the liberals are in when we get anti-crime bills because you know people want to do it and you know it is popular, so what do you do?"

The question had worried Armed Services Chairman Les Aspin, D-Wis., — who is no conservative but who had expressed concern that the House might go too far in approving politically attractive reform moves. Aspin's answer was to make deals. (*Aspin profile, Weekly Report* p. 99)

He negotiated less restrictive substitutes for several of the more significant procurement amendments and then threw his influence with House moderates behind the modified versions.

The chairman and the committee stayed out of the line of fire on three emotionally charged issues, which Aspin insisted were peripheral to the bill:

- A successful effort to increase military involvement in the hunt for drug smugglers.
- Successful moves to use polygraphs and the death penalty to comb Soviet spies out of the defense establishment.

The committee's senior Republican, William L. Dickinson, Ala., was a leader in the fight for more widespread lie-detector tests.

✓ An effort to bar the introduction of U.S. combat troops into Nicaragua. The House adopted such a ban, but with larger loopholes than had been included in a similar amendment to the fiscal 1985 defense bill. (*1984 Almanac* p. 43)

✓ Central American Involvement

As introduced by Thomas S. Foley, D-Wash., the amendment barring the introduction of U.S. combat troops into Nicaragua without express congressional authorization allowed four exceptions. Troops could be sent:

- To meet a clear and present danger of hostile attack on the United States.

- To protect the U.S. Embassy.

- To evacuate U.S. citizens.

- To meet U.S. obligations to its Latin American allies under the Rio Treaty, the basic document of the Organization of American States. The OAS treaty commits member states to treat an attack on one as an attack on all.

The Foley amendment also included a declaration that it would not affect the War Powers Act.

Liberal critics of Reagan's Central America policy had worried for several days before the Foley debate that they were losing ground. They were particularly concerned in light of the House's decision June 12 to reverse itself and give \$27 million in non-military aid to "contras" fighting the leftist government in Managua. (*Weekly Report* p. 1139)

In addition, Reagan critics feared members would adopt a get-tough stance in the wake of the detention of U.S. airline crew and passengers by terrorists in Beirut and a June 19 guerrilla attack in El Salvador that killed four off-duty U.S. Marines.

Duncan L. Hunter, R-Calif., was one of many Foley opponents who cited those factors in his arguments against the amendment: "They're trampling the American flag in Beirut. They're killing American Marines in El Salvador and what do we say to our president? We say, 'We don't trust you,'" Hunter told the House.

Foley did not contest two amendments that added further exemptions to the original list.

One, offered by Hunter and adopted 377-45, waived the troop bar if Nicaragua acquired Soviet-built MiG jet fighters or similarly modern combat planes. (*Vote 183, p. 1298*)

Another Hunter amendment adopted by voice vote, added to the circumstances that would waive the ban:

- Acquisition by Nicaragua of nu

—By Pat Towell

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clear weapons.

• A need "to respond to hijacking, kidnapping, or other acts of terrorism involving citizens of the United States or ... of any ally."

But Foley strongly opposed an amendment by Dan Burton, R-Ind., that would have waived the troop ban if the president found that Nicaragua was supporting "directly or indirectly" any military or terrorist operations in El Salvador, Honduras or Costa Rica. Reagan repeatedly has made such charges.

Foley insisted that his amendment simply codified the president's denial of any intention to invade Nicaragua. But more fundamentally, Foley's supporters argued that the amendment prevented usurpation of Congress' power to declare war.

"You people don't have the guts, you don't have the nerve to take the responsibility for what the Constitution gave you," charged David E. Bonior, D-Mich.

When the Burton amendment was rejected 186-235, Foley supporters seized on it as a token of victory. The House then adopted the much-amended Foley amendment 312-11. (Votes 184, 185, p. 1298)

Foley later insisted that the modifications had not subverted the intent of his original amendment which was, he said: "to involve Congress in any decision to use American troops against Nicaragua, except in certain stated emergencies."

But Minority Leader Trent Lott, R-Miss., claimed that the modifications had "defanged, completely denuded," the Foley measure. Hunter later said that the original amendment "was sending an invitation to Managua that they could get away with certain acts. We changed that invitation to a warning."

The House also rejected an amendment designed to limit the actions of U.S. troops in Honduras near that country's border with Nicaragua. Edward J. Markey, D-Mass., proposed an amendment to bar U.S. troops from within 20 miles of the border. A much less restrictive substitute by Dan Daniel, D-Va., was adopted 320-69. (Vote 188, p. 1298)

But conservatives led by Thomas F. Hartnett, R-S.C., defeated the modified version, 172-217.

The House adopted two related amendments by voice vote:

• By Bill Richardson, D-N.M., barring the use of the Defense Department or the CIA to supply contra guerrillas, restating the House posi-

tion on that issue.

• By Robert S. Walker, R-Pa., authorizing the president to take any anti-terrorist action necessary to protect U.S. military personnel and to take counter-terrorist action against persons responsible for the death of U.S. military personnel. Some Reagan critics warned against so open-ended a warrant for military action.

Espionage Death Penalty

Bill McCollum, R-Fla., offered the amendment that would make espionage during peacetime a capital offense under the Uniform Code of Military Justice. Currently, espionage is punishable under the military code only in wartime.

The maximum penalty for peacetime espionage is 10 years in prison.

The amendment was agreed to by voice vote after only a brief debate. McCollum requested a roll-call vote, but the request was not supported by the requisite number of members.

Immediately before the House voted on final passage of the bill, conservative GOP activist Walker demanded another vote on the McCollum amendment. It was adopted by a standing vote of 104-34.

✓ Walker then asked for a roll-call vote. Aspin later speculated that Walker hoped to force Democrats who opposed capital punishment to cast a vote that could be used against them in future campaigns.

But under the parliamentary situation at the time, Walker's request would have needed the support of 44 members. Majority Leader Jim Wright, D-Texas, acting as Speaker, announced that only 43 members — an insufficient number — had stood to support Walker's request.

✓ Walker declared Wright's headcount "absolutely incredible."

Pay Comparability

By a 122-281 vote, the House rejected an amendment by Bruce A. Morrison, D-Conn., that would have required an increase in civil service pay to match any increase in military pay during fiscal 1986. (Vote 187, p. 1298)

The House and Senate versions of the defense bill both authorize 3 percent military pay hikes, taking effect at different times, and assume a freeze in federal civilian pay.

Waste, Fraud and Abuse Issues

By a vote of 411-4, the House on June 25 adopted an amendment by

Bill Nichols, D-Ala., barring government reimbursement of contractors' costs for entertainment, lobbying, advertising, club memberships and promotional souvenirs, such as the model planes that bedeck some congressional offices. (Vote 167, p. 1294)

The amendment would not affect contractors' rights to claim such costs as business expenses for the purpose of income tax deductions.

Nichols' amendment also:

• Limits costs that could be charged to the government for the use of a corporate airplane. Contractors could be reimbursed only for the commercial coach fare for the same trip.

• Requires that Pentagon contract supervisors not be assigned to the same defense plant for more than five years.

• Empowers the secretary of defense to subpoena contractors' records to verify cost claims.

• Requires that a contractor formally certify that all indirect costs claimed are allowable under law and Pentagon purchasing regulations.

In so-called "cost-plus" contracts, a manufacturer is reimbursed for the cost of producing a weapon and also paid a fee. In addition to direct costs — the labor and materials used to build the item — reimbursement also can be claimed for indirect costs. These are the contract's "share" of the overhead cost of running the firm.

In the last year, several instances of indirect cost claims have been highly publicized by critics of the current Pentagon purchasing system. Among them was a claim for the kennel cost for boarding the dog of a General Dynamics Corp. executive.

In March, Defense Secretary Caspar W. Weinberger established new regulations limiting the kinds of indirect costs that could be charged to the Pentagon. (Weekly Report p. 986)

But meantime, Nichols — a longtime Pentagon supporter who chairs the Armed Services Subcommittee on Investigations — and Seapower Subcommittee Chairman Charles E. Bennett, D-Fla., had ordered investigators to probe the cost claims of seven other major defense firms. Nichols acknowledged that he hoped to find that General Dynamics was unusual in the large number of questionable cost claims it had submitted.

In May, an outraged Nichols announced that the investigators had found questionable cost claims by all of the firms. The result was HR 2397, cosponsored by Nichols and Bennett,

to ban certain kinds of cost claims. Nichols' amendment to the authorization bill was the text of HR 2397. (*Weekly Report* p. 887)

Thomas N. Kindness, R-Ohio, said the amendment merely codified in law the changes Weinberger already had made by regulation, and he argued against making the system too rigid: "If there's one jot or tittle that's wrong in here — and there is — how are you going to change it?" he demanded. "You're going to regret not having the flexibility that currently is in the law."

Before adopting Nichols' amendment, the House adopted by voice votes the following amendments to it:

- By Dennis M. Hertel, D-Mich., providing criminal penalties of up to a year in jail and a fine of \$250,000 for individuals and up to \$500,000 for corporations that submit claims for prohibited expenses. Nichols' original amendment provided civil penalties for repeat offenders of up to twice the cost of the claim or \$10,000 — whichever was higher.

- By John Bryant, D-Texas, extending the ban on disallowed costs to subcontractors of prime defense contractors and adding to the list of prohibited costs claims for legal expenses or fines incurred as a result of fraud.

- By Gerry Sikorski, D-Minn., requiring that contractors certify that all their cost claims are allowable at the time they first are submitted, rather than at a "final" stage, after preliminary negotiations.

Also adopted by voice vote was a "pay-as-you-go" amendment by Ron Wyden, D-Ore. This required that so-called progress payments to contractors be made only as certain stages of production are completed. Currently, the payments are made at the time the various stages are scheduled for completion, even if the actual progress of construction is behind the schedule.

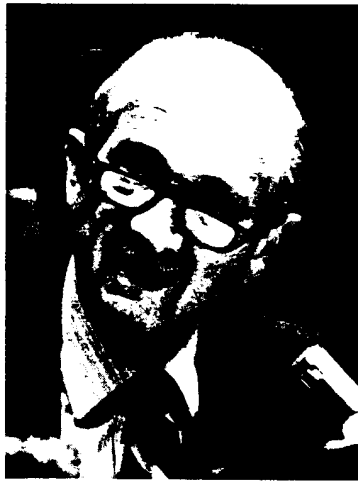
Boosting the Penalties

The House rejected 176-240 an amendment by Hertel that would have allowed the Pentagon's inspector general to stop payments to firms that Pentagon auditors charged with waste, fraud, abuse or excessive charges to the government. (*Vote 171, p. 1294*)

The amendment also would have allowed the inspector general to debar firms from receiving new Pentagon contracts.

The secretary of defense could overrule such actions, but would have to justify his decision to Congress.

In addition to the Armed Services



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—Rep. Jack Brooks, D-Texas

Committee leadership, which largely opposed the amendment, the battle engaged leaders of two other powerful House committees:

- The Energy and Commerce Committee, chaired by John D. Dingell, D-Mich., supported Hertel. Dingell's panel had held hearings in which Pentagon Inspector General Joseph Sherrick had complained that his Pentagon chiefs and the Justice Department had not taken aggressive action on the basis of auditors' findings.

"The amendment only becomes operative after the audit system has failed," Dingell said. "It simply lets [the inspector general] stop rascality, indifference, slothfulness, laziness and disregard of public responsibility" by the Pentagon management team.

- Jack Brooks, D-Texas, chairman of the Government Operations Committee, and Frank Horton, N.Y., the panel's senior Republican, opposed the amendment. Both men played key roles in the establishment of independent inspectors general in federal agencies. In 1982 they wrestled with House Armed Services to make the Pentagon's inspector general more independent.

But both men warned that Hertel's amendment would compromise the inspector general's independence by, in effect, requiring him to make decisions on the management of contracts. "You're going to take away the principal agent for pulling out waste, fraud and abuse," Horton said.

The House also adopted by voice vote an amendment by Byron L. Dorgan, D-N.D., that would bar from supervising any defense contract a contractor employee who is convicted of fraud or other contract-related felony. The ban would last at least five years. Contractor officials indicted for fraud or contract felonies would be suspended

from supervision of defense projects.

Such a bar or suspension would not cover others in the same firm.

The amendment adopted would authorize the Pentagon's inspector general to appoint an officer to oversee existing contracts by firms that the secretary of defense barred from receiving new contracts.

Dorgan had drafted, but did not offer, another amendment that would have barred for a minimum of five years the award of any new defense contracts to firms convicted of fraud or contract felony.

The dropping of that amendment reflected Dorgan's negotiation with Aspin and other committee leaders. "There are some companies we just can't afford to debar from doing work," Nichols warned. "We want to get their attention."

Increased Competition

The House adopted 342-52 an amendment by Mel Levine, D-Calif., and Denny Smith, R-Ore., designed to encourage the Pentagon to use more than one producer in contracting for equipment. The goal is to reduce prices through competitive pressure. (*Vote 172, p. 1294*)

The amendment would require the secretary of defense to plan for the use of at least two competing contractors in the development and production of any major weapon bought in the future.

It would exempt weapons which, by the end of fiscal 1986 already were in production or in the stage of "advanced development," the point at which prototypes are built.

The defense secretary could waive the two-source requirement for up to half of its total new procurement and development contracts.

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Levine and Smith had negotiated the version of the amendment adopted with Aspin who told the House that it had "the right kind of tilt toward dual-sourcing, with enough loopholes to provide exceptions."

The House also adopted a modified version of a Courter amendment designed to force an annual increase in the proportion of procurement contracts awarded competitively. Originally, the amendment would have required competition in 40 percent of the contracts awarded in fiscal 1986 with that floor rising by 5 percent in each succeeding year until 1992, when 70 percent would be needed.

But by voice vote, the House adopted a Nichols amendment to the Courter measure that made the 40 percent competitive contracts (and the subsequent annual boosts) goals rather than absolute requirements.

The Pentagon would have to report to Congress on shortfalls from those targets. The amended Courter amendment was adopted 416-0. (*Vote 168, p. 1294*)

✓ 'Revolving Door' Amendments

An amendment was adopted June 25 prohibiting any former Pentagon procurement official, for two years after leaving the Defense Department, from accepting compensation from a firm over whose work the official exercised "significant" responsibility while at the Pentagon. The measure would cover payment as a consultant as well as employment by the firm.

Sponsored by Bennett and Barbara Boxer, D-Calif., the amendment was adopted 397-19 after the House rejected a substitute by John M. Spratt Jr., D-S.C. (*Vote 170, p. 1294*)

Because of procedural jockeying, the Spratt language was voted on in a slightly modified form offered by Beverly B. Byron, D-Md. The Spratt-Byron language, rejected 140-272, would have imposed the two-year ban only on officials holding positions specifically designated by the secretary of defense. (*Vote 169, p. 1294*)

✓ Spratt's measure also would have let the defense secretary, with the concurrence of the Office of Government Ethics, waive the ban in cases in which it would hamper his ability to hire or keep qualified people.

The Spratt amendment also incorporated a provision of the Senate-passed defense authorization bill (S 1160), requiring that Pentagon procurement officials recuse themselves from overseeing contracts with any

firms with which the officials have begun to discuss employment prospects.

Several Armed Services members warned that the Bennett version would make it difficult to fill top Pentagon positions with experienced managers from the defense industry. This also had been the position of the Senate Armed Services Committee.

"People from industry virtually contribute their time," Robert E. Badham, R-Calif., said, "taking leave from jobs paying \$100,000 or \$200,000 ... to teach [Pentagon careerists] something."

Spratt warned that Bennett might be unconstitutionally vague, since it made each official responsible for deciding whether he or she had "significant responsibility" for procurement.

But Bennett's supporters hammered at several widely publicized cases in which military or civilian officials managing controversial weapons programs had retired and taken jobs with the firms whose work they previously had been overseeing.

"We can no longer afford to have our Defense Department employees ... tempted to go easy on a contractor by the possibility of a job," said Boxer.

Frank dismissed the warning that Bennett-Boxer's broad scope might have a chilling effect on officials who technically would not be covered. "I think that's a good thing. We're not talking about freedom of speech or freedom of religion," Frank said. "I don't think there ought to be an expectation that you will work for the Army or the Navy or the Marine Corps and then go to work for a defense contractor."

Frank argued that Weinberger could not be trusted with the waiver power in the Spratt version. Spratt's measure "has a lot of tough teeth in it, and then it makes the secretary of defense the dentist-in-chief and he will pull all the teeth," Frank said. "The bill will be gumming everybody over at the Pentagon."

Before adopting the Bennett language, the House adopted by voice vote an amendment by Hartnett, extending its ban to cover ex-members of Congress — "we, ourselves, who probably do more influence-peddling than anyone else," Hartnett said.

Contractors' Cost Records

By a vote of 384-31, the House on June 26 adopted a Boxer amendment requiring the Pentagon to keep records of contractors' costs in carrying out defense contracts. It would require separate listing of costs for ma-

terial, labor and overhead and of profits. (*Vote 177, p. 1296*)

The House first rejected 189-232 a Courter amendment that would instead have called for a study by the General Accounting Office of the impact on the defense industry of requiring such record-keeping. (*Vote 175, p. 1296*)

It then adopted 276-147 an amendment by Hank Brown, R-Colo., exempting firms with only relatively small amounts of defense contracts. (*Vote 176, p. 1296*)

"We're not setting onerous requirements," Boxer argued. "We just want information."

Courter and his allies warned that the reporting requirements would drive small businesses out of defense contracting.

Carl D. Pursell, R-Mich., who said he was seeking defense contracts for his district, declared: "Businesses aren't interested in more red tape and more complications and more procurement amendments. ... We're going to be basically telling small businesses, 'We don't want your business.'"

But that was rejected as a "desperation argument" by Boxer ally Bryant, who charged the Armed Services Committee was trying to stifle other members' amendments. "What you're saying today is, 'We don't want any outsiders to be a part of the process,'" Bryant said.

Fighting Spies

✓ By a vote of 333-71, the House adopted an amendment by Dickinson and C. W. Bill Young, D-Fla., requiring the Pentagon to use random polygraph examinations to screen some four million Defense and contractor employees with access to classified information. (*Vote 182, p. 1298*)

Screening tests would be restricted to questions about technical matters involving unauthorized contacts with foreign agents and unauthorized release of classified data.

Once the program got under way, Young said, it would cost about \$2.5 million annually.

Before approving the amendment, the House first rejected 121-281 a substitute by Brooks that would merely have authorized the continuation of a pilot program authorized in fiscal 1985 of 3,500 such screening exams. (*Vote 181, p. 1298*)

Brooks denounced the polygraph — popularly referred to as the "lie detector" — as "a false bellwether" and warned against a "hysteria to do

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—Rep. Stewart B. McKinney, R-Conn.



something" in the wake of the Walker spy case revelations.

"There is no scientific basis for relying on the polygraph as a valid indicator of veracity," he declared, citing several studies revealing polygraph success rates well below 100 percent.

U.S. intelligence agencies had reported that there was a Soviet spy school that trained agents in spoofing the lie detector, Brooks said. "The good criminals will survive and the [Soviet] moles will go deeper," he warned, predicting that U.S. officials would derive a false sense of security from relying on the polygraph.

"If the polygraph were worth a cotton-picking thing," Brooks declared, "every wife in this place would buy one," bringing whoops of laughter from his colleagues.

But Dickinson and Young insisted that Brooks was setting too high a standard of perfection: "If you're only 10 percent effective" in catching spies, Dickinson said, "it's worth it."

Dick Cheney, R-Wyo., quoted several senior U.S. intelligence officials who favored the use of random polygraph examinations, if only as a deterrent to espionage.

And Young cited Soviet defectors and confessed spies who said that the prospect of random lie-detector tests would be an effective deterrent.

"Give our country the tools to battle the spies and the potential spies, the traitor and the potential traitors," Young said.

Drug Enforcement

An amendment allowing military forces to arrest suspected drug smugglers other than on U.S. soil was approved 364-51. (Vote 180, p. 1296)

The amendment by Bennett — whose son died as the result of a drug

overdose — would authorize the use of military forces in a drug enforcement operation, under the control of federal drug enforcement officials, if:

- The attorney general found that the operation might not succeed without military participation; and
- The secretary of defense found that military readiness would not suffer as a result.

In general, the so-called "posse comitatus" act, dating from the post-Civil War period, bars the use of military forces for law enforcement.

In 1981, that was amended to let the military share information and provide equipment and training to civilian drug enforcement agencies.

As a practical matter, the Bennett amendment likely would apply chiefly to Navy ships, which currently can participate directly in drug enforcement operations only when carrying teams of Coast Guard personnel to perform the actual arrests.

Before adopting Bennett's proposal, the House first rejected a substitute by Glenn English, D-Okla., that would have required the Pentagon to study the relative effectiveness of allowing military personnel to participate in arrests compared with increasing the number of Coast Guard and civilian law enforcement teams assigned to Navy ships. The English amendment was rejected 81-328. (Vote 179, p. 1296)

The Bennett amendment drew impassioned support from members as politically disparate as Harlem Democrat Charles B. Rangel, and conservative Florida Republican E. Clay Shaw Jr.

Another Bennett supporter was Stewart B. McKinney, R-Conn., whose daughter, a former cocaine user, now crusades across Connecticut against drug abuse. Said McKinney,

"We sit there with five naval air stations, one naval base, five Air Force bases in Florida alone, with great American kids flying airplanes, learning how to defend us from a foreign enemy, and they are not allowed to interdict the greatest, slimiest, lousiest, cruddiest enemy we have got in this country, those people who would profit off of killing the kids of this country."

Dan Daniel, D-Va., and other opponents warned that Bennett's proposal would result in ships' crews being tied up ashore for months while drug cases crawled through the courts.

By voice vote, the House rejected an amendment to Bennett's language by Tommy F. Robinson, D-Ark., that would have directed the attorney general to establish training standards for military personnel who would be involved in such anti-drug operations.

Other Amendments

The House approved by voice vote several non-controversial amendments. One by Bennett increases the procurement authorization by \$1 billion, most of it earmarked for the Army, to beef up conventional military forces.

Another, by Larry J. Hopkins, R-Ky., requires the Pentagon to destroy existing chemical weapons stockpiles as the new "binary" chemical weapons authorized by the bill enter the U.S. inventory.

To save time, Aspin offered 20 other non-controversial amendments en bloc, constituting what one member called "the most popular amendment in the history of Congress." The macro-amendment, approved by voice vote, incorporated among others, amendments:

- By Patricia Schroeder, D-Colo., providing certain benefits to military personnel and their families who are victims of terrorism.

- By Joseph P. Addabbo, D-N.Y., authorizing coverage of home health care under certain circumstances by the Pentagon's health insurance program for military dependents (which is called CHAMPUS).

- By Wyden, ordering a report on alternative methods of budgeting for inflation.

- By Bill McCollum, R-Fla., authorizing transportation of non-lethal aid to Afghan rebels and refugees.

- By John E. Grotberg, R-Ill., expressing the sense of Congress that U.S. military bands should use domestically manufactured equipment. ■